

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

TIMMIE H.,

Petitioner,

v.

THE SUPERIOR COURT OF SHASTA COUNTY,

Respondent;

SHASTA COUNTY DEPARTMENT OF SOCIAL
SERVICES et al.,

Real Parties in Interest.

C053226

(Super. Ct. Nos. 5JVSQ2598401,
5JVSQ2598501)

Timmie H. (petitioner), the father of Jasmine H. and Connor H. (the minors), seeks an extraordinary writ to vacate the orders of the juvenile court terminating his reunification services and setting a hearing pursuant to Welfare and Institutions Code section 366.26.¹ (Cal. Rules of Court, rule

¹ Undesignated section references are to the Welfare and Institutions Code.

38.1.) Petitioner contends the juvenile court erred by finding that he was offered reasonable reunification services and that he failed to regularly participate in such services. Petitioner also claims the court should have extended reunification services beyond the 18-month statutory limit. Finally, petitioner argues the statutory period for reunification should have been tolled as to one of the minors. We shall deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2004, a petition was filed regarding three-year-old Jasmine and four-month-old Connor, alleging Connor was failing to thrive in that he had gained only 10 ounces since birth, was very thin and had a severely distended stomach. The petition further alleged that Jasmine was "thin" and did not appear to be using language or showing emotional responses.

At a series of dispositional hearings in January 2005, Jasmine was ordered returned to the home of petitioner and the minors' mother, but Connor remained placed in foster care. The juvenile court ordered family maintenance and reunification services. Petitioner's case plan included parenting education and counseling to address, among other things, anger management issues.

At the six-month review hearing in June 2005, it was reported that petitioner had not learned techniques for forming a positive bond with the minors and behaved as an "authoritarian" with them rather than playing or cuddling. There was also concern that the parents were not able to

recognize Connor's "cues" for hunger and discomfort.

Nonetheless, Connor was returned to the parents' home.

In July 2005, the matters were transferred to Shasta County, where the parents were residing. The transfer was accepted by Shasta County on August 29, 2005, and a review hearing was set for December 2005. In September 2005, the parents were referred to an infant mental health program in Shasta County.

On September 26, 2005, the minors were detained when Jasmine was discovered to have significant bruising on her buttocks and patches of hair missing from her head, in addition to other more minor bruising, which injuries a medical examiner found to be "suspicious for excessive force used by an adult." Jasmine reported that petitioner "spanked" her with an object other than his hand. Petitioner admitted spanking Jasmine, although not in a manner consistent with her injuries. In January 2006, petitioner was convicted of felony child abuse and received a six-year suspended sentence, with probationary conditions requiring him to serve six months in jail, complete a one-year child abuser's treatment program and have no contact with Jasmine without prior approval. A supplemental petition was filed as to both minors and a subsequent petition as to Jasmine setting forth allegations based on these events. The parents were referred for parenting classes.

In March 2006, the petitions were sustained and the juvenile court ordered continued services, which included a requirement that petitioner cooperate with the conditions of his

probation. Visitation was reduced to once per month based on the juvenile court's finding that more visitation would be detrimental to the minors.

According to a report prepared for the review hearing in May 2006, the parents had complied with the case plan but did not demonstrate that they could care for the minors. It was observed that the parents were not able to focus on the minors and their needs during visits. A psychological evaluation prepared in April 2006 found that petitioner had a diminished tolerance for stress and poor insight, and the evaluator expressed concern that petitioner's interactions with children had worsened despite the involvement of social services agencies. The evaluator recommended numerous services to address petitioner's issues, including "'hands-on' in vivo parenting assistance." According to the social worker's report, the services recommended by the evaluator would be fulfilled by the child abuse treatment program. A later addendum reported that petitioner had completed only eight of 52 sessions of the child abuse treatment program because he had needed to take a leave of absence to complete a work release program.

At the review hearing, which occurred in July 2006, the juvenile court found reasonable services had been provided and that it would not be appropriate to extend services beyond the 18-month statutory limit. The court made a finding that petitioner had complied with all but one of the requirements of the case plan but that he had not demonstrated the capacity to integrate parenting education or otherwise to complete the

objectives of the plan and to provide for the minors' needs. The court terminated reunification services and scheduled a hearing to select and implement a permanent plan for the minors pursuant to section 366.26.

DISCUSSION

I

Petitioner claims there was insufficient evidence to support the juvenile court's finding that he was provided reasonable services. His first basis for this claim is that no services were provided from the end of August 2005 (when the transfer in to Shasta County was accepted) until March 2006 (when the supplemental and subsequent petitions were sustained). Petitioner did not object to the reasonableness of services at the hearing in March 2006, nor did he file an appeal following that hearing. Accordingly, this claim has been forfeited. (*In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 563.)

Petitioner also complains that he was not provided "'hands-on' in vivo parenting assistance" as recommended in the April 2006 psychological evaluation. Petitioner received extensive services to address the shortcomings in his parenting abilities, including in-home parenting instruction while the minors were placed with their mother and him. Moreover, when the psychological evaluation was prepared, there was only one month remaining before the 18-month review hearing was scheduled to take place. At that point, visitation had been reduced to once per month and defendant was occupied with a work release program that prevented him from participating in child abuse treatment.

Commencing additional services at that juncture was not feasible and was unlikely to have been fruitful.

We do not evaluate the reasonableness of services based on "whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) The services here were reasonable. Accordingly, we reject petitioner's claim.

II

Petitioner argues there was insufficient evidence to support the juvenile court's finding that he failed to regularly participate in services. In fact, the court found petitioner had complied with all but one requirement of his case plan, presumably child abuse treatment. And while petitioner may have had a valid excuse for not participating in this component of services for a period of time, this does not entitle him to any relief from the juvenile court's orders.

At the 18-month review hearing, the child must be returned to the parent's physical custody unless return would create a substantial risk of detriment to the child's safety or well-being. (§ 366.22, subd. (a).) A parent's failure to regularly participate and make substantive progress in court-ordered services is prima facie evidence of such detriment. (*Ibid.*) However, while "simply complying with the reunification plan by attending the required therapy sessions and visiting the children is to be considered by the court . . . it is not determinative." (*In re Dustin R.* (1997) 54 Cal.App.4th 1131,

1143.) "The court must also consider the parents' progress and their capacity to meet the objectives of the plan; otherwise the reasons for removing the children out-of-home will not have been ameliorated." (*Ibid.*)

In the present matter, after noting that petitioner had complied with all but one of his case plan requirements, the juvenile court stated: "[H]owever, he has not demonstrated the capacity and ability to both complete the objectives of his treatment plan and to provide for the [minors'] safety, protection, physical and emotional well-being, and special needs." (*Italics added.*) The juvenile court's use of the word "however" in this sequence of findings suggests that services were being terminated *despite* petitioner's completion of most of the requirements of his case plan.

It is evident that the juvenile court's order terminating reunification efforts was based on petitioner's failure to make the requisite progress--and the fact that the statutory time had expired--not his failure to participate in services. This was a proper basis for terminating services, and there is ample evidence in the record to support the juvenile court's finding.

III

Petitioner contends the evidence fails to support the juvenile court's decision not to continue reunification efforts beyond 18 months. We reject this claim.

Initially, we point out that a continuance of reunification services beyond the statutory limit of 18 months is discretionary and is reviewed for an abuse of such discretion,

not for substantial evidence as suggested by petitioner. (*In re Daniel G.* (1994) 25 Cal.App.4th 1205, 1216.)

Moreover, only in rare instances and when warranted by the best interests of the child is it appropriate to extend reunification services beyond 18 months. (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1798-1799.) Cases recognizing a court's discretion to continue a dependency case beyond 18 months have involved the provision of inadequate or no reunification services. (See, e.g., *In re David D.* (1994) 28 Cal.App.4th 941, 953; *In re Daniel G.*, *supra*, 25 Cal.App.4th at p. 1216; *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1778.) No such circumstance is present here.

In support of his claim, petitioner relies on his previous contentions that he was not provided reasonable services and had complied with his case plan. We have rejected these claims, and they cannot provide a basis for undermining the juvenile court's determination that an extension of the time limit for reunification services was unwarranted.

IV

Finally, petitioner argues the time limits for reunification should be "tolled" as to Jasmine for periods of time she was placed in the parents' home. The provisions of section 361.5, subdivision (a), dictate otherwise: "Physical custody of the child by the parents or guardians during the applicable time period . . . shall not serve to interrupt the running of the period." (§ 361.5, subd. (a).) Case law is in accord. (*In re N.M.* (2003) 108 Cal.App.4th 845, 854; *In re*

Michael S. (1987) 188 Cal.App.3d 1448, 1462.) Petitioner's claim is without merit.

DISPOSITION

The petition is denied.

SIMS, Acting P.J.

We concur:

DAVIS, J.

HULL, J.